

1 reorganization of the Settling Defendants, shall not be deemed an assignment for purposes of this
2 Settlement Agreement.

3 **3.20 ENGINEERING COMMITTEE**

4 3.20.1 Establishment. An engineering committee (the "Engineering
5 Committee") will be established consisting of one representative from COSM and one
6 representative from the Settling Defendants. The parties shall designate their representatives
7 ("Engineering Representatives") to the Engineering Committee within thirty days of payment of
8 the Initial Payment and a first meeting will be held by the end of such thirty-day period.

9 3.20.2 Removal and Resignation. An Engineering Representative may be
10 removed and replaced by the party or parties appointing such Engineering Representative by
11 providing the other party or parties written notice. Upon removal or resignation of an Engineering
12 Representative, the respective party shall appoint a replacement Engineering Representative
13 within 10 days from such removal.

14 3.20.3 Place of Meeting. Meetings of the Engineering Committee may be
15 held at the Santa Monica City Hall, or such other locations as agreed upon by the Engineering
16 Representatives. Any meeting may be casual and be held by conference telephone or similar
17 communication equipment, so long as both Engineering Representatives can hear one another, and
18 both Engineering Representatives shall be deemed present in person at such meeting. The
19 meetings shall be informal in nature and designed to encourage the free exchange of ideas and
20 information between COSM and the Settling Defendants.

21 3.20.4 Quorum; Action. Both Engineering Representatives shall constitute a
22 quorum for the transaction of business. All action by the Engineering Committee shall require the
23 approval of both Engineering Representatives. Such approval shall be in writing if it relates to the
24 authorization of any third party actions or disbursement of funds from the Operating Account.

25 3.20.5 Action by Unanimous Written Consent. Any action required or
26 permitted to be taken at any meeting of the Engineering Committee may be taken without a
27 meeting if both Engineering Representatives of the Engineering Committee consent thereto in
28

1 writing.

2 3.20.6 Deadlock. In the absence of consensus by both Engineering
3 Representatives regarding the exercise of their duties under this Settlement Agreement, unresolved
4 issues will be subject to binding ADR pursuant to the ADR process for resolving disputes as set
5 forth in Paragraph 3.28 ("Alternative Dispute Resolution Process") of this Settlement Agreement.
6 An arbitrator's decision rendered pursuant to the ADR process shall be deemed a final decision of
7 the Engineering Committee.

8 3.20.7 Duties. The duties of the Engineering Committee shall include:

9 3.20.7.1 Establish design criteria that reflect an optimized design in
10 accordance with good engineering practice, conditions evaluated in the pilot test, and features
11 deemed necessary to obtain approval from regulatory agencies including the DHS, recognizing the
12 design parameters attached as Exhibit "H".

13 3.20.7.2 Evaluate the feasibility of using the Arcadia Site to accommodate
14 and treat the flow from the Charnock Wells (7,000 gpm) separately from facilities used by COSM
15 at the Arcadia Site to treat flow from Olympic Wells (1,500 gpm) and Arcadia Wells (500 gpm);

16 3.20.7.3 Recommend a list of contractors to pre-qualify for bid solicitation
17 where appropriate;

18 3.20.7.4 Recommend the best bidder from the bidding process;

19 3.20.7.5 Approve final design and any change orders for the Treatment
20 Facility;

21 3.20.7.6 Evaluate and manage pilot tests conducted and professional
22 services rendered in connection with the design, construction, and maintenance of the Treatment
23 Facility;

24 3.20.7.7 Evaluate and recommend approval of material contracts (and
25 change orders thereto) for goods and/or services in connection with the design, construction,
26 maintenance, and/or operation of the Treatment Facility, which shall include auditing rights in
27 favor of COSM and the Initial Settling Defendants and the Participating Defendants; "Material
28

1 Contracts" shall mean those contracts involving an aggregate payment of \$100,000.00 or more;

2 3.20.7.8 Monitor performance of contractors and subcontractors against
3 plans, including an analysis of actual spending vs. budget (by category) and prepare and provide to
4 the Settling Defendants and COSM a forecast of estimated spending for Treatment Facility Costs
5 (by category) for the next three months, such reports to be provided periodically or upon
6 reasonable request of COSM or Settling Defendants;

7 3.20.7.9 Establish, within 30 days from the date of the appointment, the
8 initial Operating Year and the initial Approved Annual Budget and provide the same to the
9 Settling Defendants and COSM;

10 3.20.7.10 Establish, within thirty days prior to the end of each Operating
11 Year of the Treatment Facility, the Approved Annual Budget for the next succeeding year and
12 provide the same to the Settling Defendants and COSM;

13 3.20.7.11 Evaluate and approve any amendment to an Approved Annual
14 Budget and provide notice of any Special Treatment Facility Payments;

15 3.20.7.12 Perform the duties specified in Paragraph 3.18 ("Subsequent
16 Releases");

17 3.20.7.13 Evaluate the feasibility of alternate uses of treated water,
18 pursuant to Paragraph 3.22 ("Conservation of Water") of this Settlement Agreement, to be
19 implemented in the event serving the treated water is delayed or denied;

20 3.20.7.14 Evaluate whether there is a need for new conveyance piping to
21 the Treatment Facility;

22 3.20.7.15 Evaluate whether COSM's treatment goals for (i) MTBE (i.e.,
23 less than 0.5 µg/l), (ii) TBA (i.e., less than 1 µg/l), and/or (iii) the DHS requirements to terminate
24 treatment for MTBE, TBA, and Related Petroleum Hydrocarbons from the Aquifer at the
25 Treatment Facility have been met and, if so, recommend that COSM apply to DHS for approval to
26 terminate such treatment;

27 3.20.7.16 Perform all other duties and obligations of the Engineering
28

1 Committee as set forth in this Settlement Agreement.

2 3.20.8 Termination. The Engineering Committee shall remain in place until
3 the later of the Funding Termination Date or the payment of the Wind Down Payments.

4 3.21 TREATMENT FACILITY SITE

5 3.21.1 As provided in this Agreement, the parties intend that the Treatment
6 Facility will be built to hydraulically accommodate 7,000 gpm flow from the Aquifer and the
7 Charnock Well Field.

8 3.21.2 Subject to applicable law,

9 (a) if the Engineering Committee determines that the Arcadia Site is
10 feasible for the 7,000 gpm Charnock Treatment Facility separately from COSM's facilities for the
11 Olympic and Arcadia flow, then

12 (i) the cost of constructing the Charnock Treatment Facility on the
13 Arcadia Site to hydraulically accommodate 7,000 gallons per minute flow from the Aquifer and
14 the Charnock Wells shall be a Treatment Facility Cost, and

15 (ii) the cost of conveying Charnock Well water separately from the
16 point where the Charnock pipeline meets the pipeline from the Olympic Wells to the Arcadia Site
17 shall be a Treatment Facility Cost.

18 (iii) COSM may request that a combined Treatment Facility capable
19 of treating the combined flow from the Charnock Well Field (7,000 gpm), along with the Olympic
20 Wells (1,500 gpm) and/or the Arcadia Wells (500 gpm), be constructed on the Arcadia Site, in
21 which event the treatment of the Olympic Wells and Arcadia Wells shall be COSM Project
22 Enhancements.

23 (b) If the Engineering Committee determines that the Arcadia Site is not
24 feasible for the 7,000 gpm Charnock Treatment Facility separate from the treatment facilities for
25 the Olympic and Arcadia Wells, then,

26 (i) The Settling Defendants may elect to site the 7,000 gpm
27 Charnock Treatment Facility on another property or to construct a combined Treatment Facility on
28

1 the Arcadia Site.

2 (ii) If the Settling Defendants elect to site the Charnock 7,000 gpm
3 Treatment Facility on another property, then

4 (A) the cost of conveying water separately from the
5 Charnock Wells to such other property and of delivering the water into COSM's water system
6 shall be Treatment Facility Costs;

7 (B) the Settling Defendants shall have one year from the
8 Engineering Committee's determination that the Arcadia Site is not feasible to designate other
9 property for acquisition by eminent domain or to enter into a purchase agreement, open escrow to
10 acquire such property and close within a reasonable period, failing which, the City shall have the
11 right to select another property; and

12 (C) the costs of acquiring the other property by purchase or
13 eminent domain shall be Treatment Facility Costs, regardless of who selected the property or the
14 method of acquisition;

15 (iii) If the Settling Defendants elect to construct a combined
16 Treatment Facility on the Arcadia Site, then the capital costs of constructing such a combined
17 Treatment Facility shall be a Treatment Facility Cost, and the incremental operational expense
18 shall be borne by COSM.

19
20 3.21.3 Any property tax assessed against a site other than the Arcadia Site,
21 and any increase in property taxes assessed because of capital improvements for the Treatment
22 Facility, will be borne by the Parties in the same proportion as the Parties bear the site acquisition
23 costs and the capital improvement costs.

24 3.22 CONSERVATION OF WATER

25 COSM shall use its best efforts to obtain permission from the DHS to deliver
26 treated water from the Charnock Well Field wells to its customers as soon as treated water meets
27 applicable drinking water permit criteria for thirty days. The Engineering Committee will evaluate
28 the feasibility of alternate uses of treated water, to be implemented in the event serving the treated

1 water is delayed or denied. Such alternatives may include exchange with other water purveyors,
2 reinjection, other end uses, such as irrigation, and if no other practical alternative exists to
3 discharge to appropriate receiving waters.

4 3.23 PROJECT ENHANCEMENTS

5 3.23.1 At the request of either COSM or the Settling Defendants,
6 respectively, the Engineering Committee may incorporate a Project Enhancement into the
7 Treatment Facility. A "Project Enhancement" includes but is not limited to (a) equipment or
8 facilities to treat, store, or transport water which is not produced by the Charnock Well Field;
9 (b) existing COSM equipment or facilities currently used for other purposes that could be used as
10 a component of the Treatment Facility; or (c) other modifications of the Treatment Facility
11 proposed by COSM or Settling Defendants. The costs of such Project Enhancement(s) shall be
12 allocated as provided in this Paragraph.

13 3.23.2 In the case of a Project Enhancement proposed by COSM, COSM will
14 pay for the incremental capital and Operations and Maintenance Costs of a Project Enhancement
15 above those costs of a Treatment Facility with process elements sized to hydraulically
16 accommodate 7,000 gallons per minute for water produced from the Aquifer by the Charnock
17 Well Field. However, treatment of other water or compounds that do not increase the capital and
18 Operations and Maintenance Costs of the Treatment Facility do not constitute a Project
19 Enhancement. Prior to the Funding Termination Date, under all circumstances, the Settling
20 Defendants are responsible for the full reasonable capital and Operations and Maintenance Costs
21 of treating water produced by the Charnock wells to remove MTBE, TBA, and Related Petroleum
22 Hydrocarbons.

23 3.23.3 By way of example only and without limitation, the Engineering
24 Committee may decide that a necessary component of the Treatment Facility is a water reservoir
25 with a five million gallon capacity. COSM, for reasons independent of the need to treat water
26 from the Charnock Well Field for MTBE and Related Petroleum Hydrocarbons, may request that
27 the size of the reservoir be increased from five million to seven million gallons. If a seven million
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1 gallon reservoir is used, the Settling Defendants shall be responsible for a Treatment Facility
2 Payment in the amount of what it would cost to implement a five million gallon reservoir, and
3 COSM shall be responsible for the incremental cost of the seven million gallon reservoir.

4 3.23.4 In the case of a Project Enhancement proposed by the Settling
5 Defendants, the Settling Defendants will pay for the incremental capital and Operations and
6 Maintenance Costs to COSM. Those costs shall be Treatment Facility Costs.

7 3.24 COMMUNICATIONS WITH DHS

8 3.24.1 The Settling Defendants and COSM agree to use best efforts to present
9 a single position to DHS on major items concerning the design, construction, operation and
10 maintenance of the Treatment Facility. In this regard, the Settling Defendants and COSM agree to
11 consult with each other in advance on the following communications with DHS:

12 3.24.1.1 recommended pilot test design;

13 3.24.1.2 material change in operation of pilot test from design;

14 3.24.1.3 recommended Treatment Facility design;

15 3.24.1.4 material change in Treatment Facility design during construction
16 requiring agency approval;

17 3.24.1.5 material change in operation of Treatment Facility from approved
18 operating manual; and

19 3.24.1.6 request for termination of operation of Treatment Facility or
20 request for change in conditions for termination of operation of Treatment Facility.

21 3.24.2 If the Settling Defendants and COSM cannot agree on a position on
22 the communications listed in sub-paragraph 3.24.1 above, either representative of the Engineering
23 Committee may submit the matter to ADR as provided in Paragraph 3.28 ("Alternative Dispute
24 Resolution Process") to resolve the conflict. Either party to the arbitration may request findings of
25 fact and conclusions of law from the arbitrator. Nothing in this Agreement shall prohibit Settling
26 Defendants and/or COSM from maintaining their separate position(s) before DHS; provided,
27 however, that if COSM maintains such separate position and it is adopted by DHS, COSM shall
28

1 be responsible for any incremental cost above costs that would have been incurred if DHS had
2 adopted the position approved by the arbitrator in the ADR decision.

3 3.25 REPRESENTATIONS AND WARRANTIES

4 3.25.1 Of COSM. COSM represents and warrants to the Settling Defendants
5 as follows:

6 3.25.1.1 COSM is a municipal corporation, organized and validly existing
7 under the laws of the State of California with its principal place of business located at 1685 Main
8 Street, Santa Monica, California 90401.

9 3.25.1.2 The execution, delivery and performance by COSM of this
10 Settlement Agreement, and the execution, delivery and performance by COSM of the Operative
11 Agreements to which it is a party, have been approved by the City Council of COSM. In
12 connection with the execution, delivery, and performance of this Settlement Agreement and the
13 Operative Agreements, COSM has complied with all provisions of the Constitution and laws of
14 the State of California and COSM's charter, rules, and regulations, and has the full power and
15 authority to enter into this Settlement Agreement and the Operative Agreements. The execution,
16 delivery, and performance of this Settlement Agreement and the Operative Agreements by COSM
17 do not and will not contravene or constitute a default under any provision of applicable law or
18 regulation or of any agreement, judgment, injunction, order, decree, or contractual restriction
19 binding on COSM or its property, and do not result in or require (except as provided for by this
20 Settlement Agreement or the Security Agreement) the creation or imposition of any lien, security
21 interest, or other charge or encumbrance in favor of a third party upon or with respect to any of
22 COSM property.

23
24 3.25.1.3 Except as provided in Paragraph 3.1.2, no further approval,
25 authorization, consent, order, notice to, or filing or registration, with any Governmental Authority
26 is required with respect to COSM's participation in the Settlement and the execution, delivery to,
27 and performance by COSM of this Settlement Agreement and the Operative Agreements to which
28 it is a party.

1 3.25.1.4 This Settlement Agreement and the Operative Agreements to
2 which COSM is a party have been or will be duly executed and delivered and are, or upon
3 execution will be, the valid and legally binding obligations of COSM, enforceable against COSM
4 in accordance with their respective terms. Without limiting the generality of the foregoing, COSM
5 is not entitled to any immunity on any grounds (i) with respect to the performance of its
6 obligations under this Settlement Agreement and Operative Agreements, or (ii) from set-off or any
7 legal proceedings to enforce or collect upon its obligations hereunder or under the other Operative
8 Agreement.

9 3.25.1.5 Subject to the provisions and conditions of the Assignment
10 Agreement and COSM's attorney's fees lien, Paragraph 3.17, COSM represents that no other
11 person or entity has any interest in the Claims; that it has the sole right and exclusive authority to
12 execute this Settlement Agreement and receive the consideration specified in this Settlement
13 Agreement; and that COSM has not sold, assigned, transferred, conveyed, otherwise disposed of,
14 granted a security interest in or lien on any Claims within the scope of this Settlement Agreement.

15 3.25.1.6 COSM is or will be the sole record and beneficial owner of the
16 Facility Site, is or will be the sole record and beneficial owner of the Collateral (subject to the
17 Security Agreement) and the Treatment Facility, and there are no Encumbrances except Permitted
18 Encumbrances on the Arcadia Site, the Treatment Facility, or the Collateral. COSM is in
19 compliance, in all material respects with all covenants, conditions, restrictions, easements, rights
20 of way, and other rights of third parties relating to the Arcadia Site.

21 3.25.1.7 COSM is solvent and its senior unsecured debt obligations have
22 Investment Grade Rating. COSM is not aware of any existing circumstances or events that could
23 reasonably result in the loss of such rating.

24 3.25.1.8 COSM has filed all applicable tax returns and reports required to
25 be filed and has paid all material taxes, assessments, fees and other governmental charges levied
26 or imposed upon them or COSM properties, including Facility Sites and Treatment Facility,
27 income or assets otherwise due and payable, except those which are being contested in good faith
28

1 by appropriate proceedings diligently conducted and for which adequate reserves have been
2 provided in accordance with GAAP.

3 3.25.1.9 The Security Agreement creates a valid first priority security
4 interest upon the Collateral described therein securing the obligations of COSM to the Settling
5 Defendants pursuant to this Settlement Agreement and the Operative Agreements, and upon the
6 filing of a UCC-1 Financing Statement pursuant to the Security Agreement with the California
7 Secretary of State, all actions required to perfect this first priority security interest shall have been
8 taken.

9 3.25.1.10 COSM is not currently in Default.

10 3.25.2 Of The Settling Defendants. Each Settling Defendant hereby
11 represents and warrants, on its own behalf, to COSM as follows:

12 3.25.2.1 It is a corporation duly organized, validly existing and in good
13 standing under the laws of the jurisdiction of its incorporation, and to the extent required under
14 California laws is duly authorized to do business in the State of California.

15 3.25.2.2 It has all requisite corporate power and authority to enter into and
16 deliver this Settlement Agreement and the Operative Agreements to which it is a party and to
17 consummate the transactions contemplated hereby and thereby. The execution and delivery by it
18 of this Settlement Agreement and the Operative Agreements to which it is a party, the
19 performance of its obligations hereunder and thereunder, and the consummation by it of the
20 transactions contemplated hereby and thereby have been duly authorized by all necessary
21 corporate action on its part. This Settlement Agreement has been, and the Operative Agreements
22 to which it is a party have been or shall be, duly executed and delivered. This Settlement
23 Agreement constitutes, and each of the Operative Agreements to which it is a party (when so
24 executed and delivered) constitutes or will constitute, a legal, valid and binding obligation of it,
25 enforceable against it in accordance with its terms.

26 3.25.2.3 The execution, delivery, and performance by it of this Settlement
27 Agreement and the Operative Agreements to which it is a party do not and will not contravene or
28

1 constitute a default under any provisions of applicable law or regulation or any agreement,
2 judgment, injunction, order, decree, or contractual restriction binding on it or its property, and do
3 not result in or require the creation or imposition of any lien, security interests, or other charge
4 encumbrance upon or with respect to any of its properties.

5 3.25.2.4 Except as provided in this Settlement Agreement, no further
6 approval, authorization, consent, order, notice to or filing or registration with any Governmental
7 Authority is required with respect to its participation in the settlement and entering into and
8 performance by it of this Settlement Agreement and any Operative Agreements to which it is a
9 party.

10 3.25.2.5 Subject to the provisions of this Settlement Agreement, it
11 represents that no other person or entity has any interest in the claims it is releasing pursuant to
12 Paragraph 3.6 ("Settling Defendants' Release of Claims").

13 3.25.2.6 It is not currently in Default.

14 3.26 INDEMNIFICATION

15 3.26.1 Indemnification Obligation. COSM hereby irrevocably and
16 unconditionally agrees to indemnify, defend, and hold the Settling Defendants and their respective
17 officers, directors, employees, agents, assigns, and Affiliates (an "Indemnitee"), to the extent of
18 insurance, harmless from and against all actual or threatened liabilities, claims, actions, damages
19 (including without limitation foreseeable and unforeseeable consequential damages), penalties,
20 costs, expenses (including without limitation reasonable attorneys' fees), and losses directly or
21 indirectly arising out of, relating to, or resulting from the negligent operation of the Treatment
22 Facility.
23

24 3.26.2 Continuing Obligation. The indemnification obligations of COSM set
25 forth in this Paragraph 3.26 ("Indemnification") shall continue indefinitely to the extent it is
26 reimbursed for the cost of insurance acquired under this Agreement notwithstanding the
27 occurrence of the Funding Termination Date, Final Judgment, or the termination of this Settlement
28 Agreement.

1 **3.27 DEFAULTS AND REMEDIES**

2 3.27.1 Notice And Cure. If any party to this Settlement Agreement believes
3 that another party is in Default under this Settlement Agreement or any Operative Agreement, the
4 complaining party shall promptly serve written notice to the other parties to this Settlement
5 Agreement (a "Notice of Default") thereof that a Default has occurred. The notice shall identify
6 the defaulting party, and shall specifically identify the basis of any claimed Default. The party
7 alleged to be in Default shall serve within 7 business days thereafter notice to the complaining
8 party that it will either (i) cure the asserted Default within 30 days or (ii) dispute the allegation of
9 Default. If a party cures a Default, there is no Material Event of Default or Fundamental Event of
10 Default ("Event of Default"). If the receiving party elects to dispute the allegation of Default
11 (including by failing to respond to the allegation), or if there is a dispute about whether the Default
12 has been cured, the matter shall be referred promptly to arbitration pursuant to the ADR process as
13 provided in Paragraph 3.28 ("Alternative Dispute Resolution Process") of this Settlement
14 Agreement.

15 3.27.2 Material Event of Default. A finding by the arbitrator pursuant to the
16 ADR process as provided in Paragraph 3.28 ("Alternative Dispute Resolution Process") that any of
17 the following events has occurred and not been cured pursuant to Paragraph 3.27.1 shall constitute
18 a "Material Event of Default" under this Settlement Agreement or any Operative Agreement by
19 COSM or any Settling Defendant(s), respectively:

- 20
- 21 (i) A material breach of any obligation or undertakings imposed
 - 22 by this Settlement Agreement or any Operative Agreement.
 - 23 (ii) A material breach of any representation, warranty, or
 - 24 covenant made under this Settlement Agreement or any
 - 25 Operative Agreement by any party to this Settlement
 - 26 Agreement or any Operative Agreement.
 - 27 (iii) Failure to make any Initial Payment or Treatment Facility
 - 28 Payment (by any Settling Defendant), or any refund of

1 excess Treatment Facility Costs pursuant to Paragraph 3.16
2 (by COSM) at the time or in the amount required by this
3 Settlement Agreement or any Operative Agreement;

4 (iv) Failure by any party to timely make any deposit to the
5 Operating Account at the time or in the amount required by
6 this Settlement Agreement;

7 (v) An Insolvency Event relating to COSM or any Settling
8 Defendant. For purposes of this Settlement Agreement, an
9 "Insolvency Event" means:

10 (A) Such party shall (i) apply for or consent to the
11 appointment of a receiver, trustee, liquidator, or
12 custodian of itself or of all or a substantial part of its
13 property; (ii) be unable, or admit in writing its
14 inability, to pay its debts generally as they mature;
15 (iii) make a general assignment for the benefit of its
16 or any of its creditors; (iv) be dissolved or liquidated
17 in full or in part; (v) become insolvent (as such term
18 may be defined or interpreted under any applicable
19 statute); (vi) commence a voluntary case or other
20 proceeding seeking liquidation, reorganization, or
21 other relief with respect to itself or its debts under
22 any bankruptcy, insolvency or other similar law now
23 or hereafter in effect or consent to any such relief or
24 to the appointment of or taking possession of its
25 property by any official in any involuntary case or
26 other proceeding commenced against it; or (vii) take
27 any action for the purpose of effecting any of the
28

foregoing; or

- (B) Proceedings for the appointment of a receiver, trustee, liquidator or custodian of such party or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to such party or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 60 days of commencement.

3.27.3 Remedies For Material Event of Default.

3.27.3.1 The party alleging that a Material Event of Default has occurred may seek an order from the arbitrator:

- (i) requiring compliance (with or without proof of actual damages) with this Settlement Agreement and any Operative Agreement(s);
- (ii) awarding damages, if any, against the defaulting party or parties;
- (iii) awarding attorneys' fees and costs reasonably incurred in arbitration; and
- (iv) imposing a sanction against the defaulting party or parties of up to 150% of damages, fees, and costs for repeat violations and/or lack of good faith basis for the defaulting party's or parties' position as determined by the arbitrator.

3.27.3.2 With respect to an Insolvency Event of COSM under

1 Paragraph 3.27.2 (v), and regardless of the expiration of any cure periods provided in
2 Paragraph 3.27.1, the Settling Defendants' obligations to make Treatment Facility Payments shall
3 be suspended until the receipt of court approval that future Treatment Facility Payments will be
4 made on a secured basis and the Settling Defendants' may take whatever steps they reasonably
5 deem necessary, including under the Account Control Agreement, the Security Agreement and
6 Paragraph 3.17 ("Security Agreement/Limited Recourse/Lien"), to preserve their security interest
7 and liens with respect to Treatment Facility Payments previously made; provided that COSM and
8 Settling Defendants shall seek court approval to permit the disbursement of funds held in the
9 Operating Account as of the date of the occurrence of the Insolvency Event for payment of
10 Treatment Facility Costs then due to third parties. Any remedies awarded by the arbitrator under
11 Paragraph 3.27.3.1 and remedies under this Paragraph 3.27.3.2 are cumulative.

12 3.27.4 Fundamental Event of Defaults. The occurrence of any of the
13 following events (to the extent not cured pursuant to Paragraph 3.27.1) shall constitute a
14 "Fundamental Event of Default" under this Settlement Agreement:

- 15 (i) any refusal and/or failure to timely comply with an order or
16 decision of the arbitrator. As a condition of pursuing any
17 legal challenge to an arbitrator's decision or order, any party
18 found to be in default in the ADR process shall comply with
19 the arbitrator's decision or order pending any final decision
20 by a court considering the legal challenge. (The notice and
21 cure provisions of Paragraph 3.27.1 shall not apply to this
22 Paragraph 3.27.4(i).)
- 23 (ii) any assignment or attempted assignment, whether in whole
24 or in part, of this Settlement Agreement or any Operative
25 Agreement in violation of the terms of this Settlement
26 Agreement following, in any such case, an order or decision
27 of the arbitrator that such assignment or attempted
28

1 assignment violates this Settlement Agreement and the
2 defaulting party fails to comply with such decision or order
3 within the time for compliance established therein;

4 (iii) any assignment or attempted assignment by COSM after the
5 date of this Settlement Agreement of any Claims currently
6 asserted in the Litigation to any person or entity not a party
7 to this Settlement Agreement following, in any such case, an
8 order or decision of the arbitrator that such assignment
9 violates this Settlement Agreement and the defaulting party
10 fails to comply with such decision or order within the time
11 for compliance established therein;

12 (iv) any of the following actions under circumstances not
13 authorized by this Settlement Agreement or any Operative
14 Agreement following, in any such case, an order or decision
15 of the arbitrator that such action violates this Settlement
16 Agreement and the defaulting Party fails to comply with
17 such decision or order within the time for compliance
18 established therein: (A) instruction by any Settling
19 Defendant to the Bank with respect to the Operating Account
20 or the Collateral; (B) stop payment order by any Settling
21 Defendant on a check drawn on the Operating Account;
22 (C) seizure of all or any part of the Collateral; (D) other
23 action by any Settling Defendant to enforce the security
24 interest against the Collateral granted by COSM to the
25 Settling Defendants; and/or (E) action by any Settling
26 Defendant to act on the lien granted by COSM pursuant to
27 Paragraph 3.17;
28

- 1 (v) the initiation of any proceeding by a party to this Settlement
2 Agreement or any Operative Agreement seeking to have this
3 Settlement Agreement or any Operative Agreement declared
4 void or invalid except in accordance with Paragraph 3.1.2;
5 and
6 (vi) any Insolvency Event as to any party to this Settlement
7 Agreement or any Operative Agreement that the arbitrator
8 determines renders the party unable to perform its
9 obligations under this Settlement Agreement or any
10 Operative Agreement. The notice and cure provisions of
11 Paragraph 3.27.1 shall not apply to this Paragraph 3.27.4(vi).
12

13 3.27.5 Remedies for Fundamental Event of Default.

14 3.27.5.1 COSM's Remedies for Fundamental Event of Default by Settling
15 Defendants. In the event of a Fundamental Event of Default by any Settling Defendant COSM
16 shall be entitled to elect among the following remedies:

- 17 (i) (A) require immediate payment into the Operating Account
18 by the defaulting Settling Defendant of 100 percent of the
19 estimated present value of all unpaid future Treatment
20 Facility Costs under this Settlement Agreement, and (B) as
21 to such defaulting Settling Defendant, void the Release
22 granted pursuant to Paragraph 3.5 ("COSM's Release of
23 Claims"), vacate the dismissal of the Litigation, and relate
24 back the filing of Claims to the original filing date of the
25 Litigation; or
26 (ii) at COSM's option, with respect to Fundamental Event of
27 Default described in Paragraph 3.27.4(iv) only, require the
28 defaulting Settling Defendant to pay 150% of the amount of

1 Collateral affected or 150% of any other amount affected by
2 the defaulting party's wrongful action.

3 In addition to any election among the remedies set forth in this sub-
4 Paragraph 3.27.5.1, COSM shall be entitled to the remedies specified for Material Event of
5 Defaults on a cumulative basis.

6 3.27.5.2 Settling Defendants' Remedies for Fundamental Event of Defaults
7 by COSM. In the event of a Fundamental Event of Default by COSM, the Settling Defendants,
8 acting jointly, shall be entitled to (i) terminate their obligations to make any further Treatment
9 Facility Payments, (ii) Wind Down the Operating Account, and (iii) exercise their rights under the
10 Security Agreement and Account Control Agreement. In the event the Settling Defendants elect
11 this remedy, COSM's releases set forth in Paragraph 3.5 ("COSM's Release of Claims") shall
12 remain in full force and effect.

13 In addition to any remedies set forth in this sub-paragraph 3.27.5.2,
14 the Settling Defendants shall be entitled to the remedies specified for Material Event of Default on
15 a cumulative basis. Remedies available to Settling Defendants under this sub-paragraph 3.27.5.2
16 are full recourse obligations of COSM.

17 3.27.6 Payment of Disputed Amounts. In the event of a dispute as to an
18 obligation of a party to this Settlement Agreement to make a payment due under this Settlement
19 Agreement or the amount thereof or of the obligation of a party to make a deposit into the
20 Operating Agreement or the amount thereof, the party who allegedly is obligated to make such
21 payment or deposit shall pay the disputed amount or make the disputed deposit and reserve its
22 right to arbitrate under Paragraph 3.28 ("Alternative Dispute Resolution Process") the issue of
23 whether it was obligated to make such payment or deposit and, if that party prevails on that issue
24 in the arbitration shall be entitled to a credit in such amount against all future obligations under
25 this Settlement Agreement. In the event that the arbitrator determines that COSM received or
26 authorized a payment from the Operating Account in violation of this Settlement Agreement or
27 any Operative agreement, COSM shall be obligated to promptly refund, on a full recourse basis,
28

1 such payment to the Operating Account.

2 3.27.7 Delay. The Settling Defendants have the right to seek arbitration to
3 prevent actions or inactions of COSM from creating delay. The Settling Defendants do not have
4 the right to accrue claimed damages for delay and assert those claimed damages as an offset to the
5 obligation to make Treatment Facility Payments.

6 3.27.8 Vicarious Liability. Neither COSM nor the Settling Defendants shall
7 be vicariously liable for actions or inactions of any contractor recommended by the Engineering
8 Committee and retained by COSM to design, construct, or operate the Treatment Facility, except
9 that COSM, as the contracting party with any such contractor, shall be responsible for enforcing
10 the terms of the underlying contract in accordance with EC Directives.
11

12 3.28 **ALTERNATIVE DISPUTE RESOLUTION PROCESS.**

13 3.28.1 In the event of any dispute between Settling Defendants and COSM
14 to this Settlement Agreement arising out of or relating to this Settlement Agreement or any other
15 Operative Agreement, those parties agree to try in good faith to settle the dispute by negotiation
16 and/or mediation. For any Settling Defendant(s) to request arbitration a request must be signed by
17 Shell and either CVX or XOM.

18 3.28.2 If the dispute cannot be resolved to those parties' mutual satisfaction
19 through negotiation and/or mediation within thirty (30) days, the dispute shall be resolved through
20 binding arbitration. It is the intent of the parties that the arbitration be structured in such a way as
21 to minimize costs and delay. The arbitration shall be conducted in accordance with the then
22 current Judicial Arbitration and Mediation Service ("JAMS") Comprehensive Arbitration Rules
23 and Procedures ("JAMS RULES"), with the following stipulations:

24 3.28.3 A demand for arbitration by the Settling Defendants shall be signed
25 by Shell and either CVX or XOM.

26 3.28.4 The arbitration hearing shall be held before Judge Keith Wisot (ret.)
27 at JAMS or, if Judge Wisot is not available or declines to serve, a single arbitrator if the arbitrating
28

1 parties agree upon a single arbitrator. If the arbitrating parties cannot agree upon a single
2 arbitrator, then each shall select an arbitrator from JAMS, and those arbitrators shall select a third
3 arbitrator from JAMS who shall be the single arbitrator for the dispute. If the two arbitrators are
4 unable to agree upon a third arbitrator within 15 days, the third arbitrator shall be selected by
5 JAMS. Any reference to an "arbitrator" in this Settlement Agreement shall be deemed a reference
6 to an arbitrator selected pursuant to this Paragraph 3.28.4.

7 3.28.5 Judge Wisot has disclosed that he has no interest affecting his
8 impartiality. Pursuant to C.C.P. 1281.9, all parties waive any further or separate written disclosure
9 from Judge Wisot. The parties agree to utilize Judge Wisot as the arbitrator, notwithstanding that
10 he has served as a mediator in connection with this settlement.

11 3.28.6 Unless otherwise ordered, each arbitrating party's presentation at the
12 arbitration hearing shall be limited to 14 hours, and the hearing shall be completed within ten (10)
13 business days.

14 3.28.7 The arbitration decision shall be rendered not later than thirty (30)
15 days after the final day of the hearing and shall be judicially enforceable, non-appealable, and
16 binding.

17 3.28.8 Summaries of any expert testimony, along with copies of all
18 documents to be submitted as exhibits, shall be exchanged at least ten (10) business days before
19 arbitration under procedures set up by the arbitrator.

20 3.28.9 Except as otherwise specified herein, there shall be no discovery or
21 dispositive motion practice except as may be permitted by the arbitrator, who may authorize only
22 such discovery as is shown to be necessary to ensure a fair hearing. No discovery or motions
23 permitted by the arbitrator shall in any way alter the time limits specified herein.

24 3.28.10 If the arbitrator desires the assistance of a technical expert to aid in
25 deciding the dispute between the parties, the technical expert shall be chosen by agreement of the
26 arbitrating parties or, absent such agreement, by the arbitrator (subject to the arbitrating parties'
27 right to disqualify the expert for conflict of interest).
28

1 3.28.11 Arbitration costs, arbitrator's fees and reasonable attorneys' fees and
2 costs shall be awarded to the prevailing parties, if any, by the arbitrator.

3 3.28.12 For disputes concerning construction and/or interpretation of this
4 Settlement Agreement or any Operative Agreement, the arbitrator's decision shall be governed by
5 the then-current JAMS rule concerning award. The arbitrator shall be entitled to award specific
6 performance as a remedy.

7 3.28.13 The parties to this Settlement Agreement agree that any decision by
8 the arbitrator that is not overturned by a reviewing court shall have the same issue preclusion
9 effect as a final judgment rendered by a court of competent jurisdiction.

10 3.28.14 The parties to this Settlement Agreement agree, notwithstanding the
11 common law and to the fullest extent permitted by law, that the arbitrator may order the parties to
12 take actions required to implement the terms of this Settlement Agreement or refrain from taking
13 actions that are contrary to the terms of this Settlement Agreement.

14 3.28.15 The trial court shall retain jurisdiction in Orange County Superior
15 Court Case No. 01-CC-04331 to enforce an arbitration decision pursuant to this Settlement
16 Agreement pursuant to California Code of Civil Procedure sections 664.6 and 1285, et seq.

17 **3.29 INTERPRETATION OF AGREEMENT**

18 Notwithstanding any other provision of this Settlement Agreement, the parties to
19 this Settlement Agreement agree that COSM's operational requirements and the decisions of the
20 Engineering Committee are entitled to equal consideration and treatment by the arbitrator in any
21 arbitration conducted hereunder.

22 **3.30 PUBLIC STATEMENTS**

23 Pending the trial court's approval of the good faith settlement between COSM and
24 the Settling Defendants, the parties to this Settlement Agreement shall coordinate communications
25 with the public concerning the settlement and the design, construction, and operation of the
26 Treatment Facility. Each party to this Settlement Agreement will attempt to centralize
27 communications with the press to employees who perform that function regularly and discourage
28

1 other employees from giving statements to the press.

2 **3.31 CONFIDENTIALITY PROVISIONS**

3 The parties to this Settlement Agreement shall keep confidential the content of the
4 negotiations, points of discussion, documents, communications, and supporting data utilized or
5 prepared in connection with, or exchanged at, the mediation that preceded this Settlement
6 Agreement as contemplated by California Evidence Code 1119, et seq., except as otherwise
7 required by law.

8 **3.32 NOTICES**

9 All notices, requests, demands, claims, and other communications that are required
10 or may be given pursuant to this Settlement Agreement must be in writing and delivered
11 personally against written receipt, by a recognized overnight delivery service, or by telecopy, to
12 the parties at the addresses below (or to the attention of such other person or such other address as
13 any party may provide to the other party by notice in accordance with this paragraph). Any such
14 notice or other communication will be deemed to have been given (i) if personally delivered, when
15 so delivered, against written receipt, (ii) if sent by a nationally recognized overnight delivery
16 service which guarantees next day delivery, one Business Day after being so sent, or (iii) if given
17 by telecopier, once such notice or other communication is transmitted to the facsimile number
18 ~~specified above and the appropriate answer back or telephonic confirmation is received, provided~~
19 that such notice or other communication is promptly thereafter delivered in accordance with the
20 provisions of clauses (i) or (ii) hereof, in each case addressed to the intended recipient as set forth
21 above. Any notice, request, demand, claim, or other communication given hereunder using any
22 other means (including mail, electronic or otherwise) shall not be deemed to have been duly given
23 unless and until such notice, request, demand, claim or other communication actually is received
24 by the individual for whom it is intended.

25
26 FOR CITY OF SANTA MONICA:

27 City Attorney
28 City of Santa Monica
1685 Main Street
Santa Monica, California 90401

1 TELEPHONE: (310) 458-8336
2 FAX: (310) 395-6727

3 and

4 Director
5 Environmental and Public Works Management Dept.
6 City of Santa Monica
7 1685 Main Street
8 Santa Monica, California 90401
9 TELEPHONE: (310) 458-8221
10 FAX: (310) 576-3598

11 with copy to:

12 Fred Baron, Esq.
13 Scott Summy, Esq.
14 Baron & Budd
15 3102 Oaklawn Avenue, Suite 1100
16 Dallas, Texas 75219
17 TELEPHONE: (214) 521-3605
18 FAX: (214) 520-1181

19 Victor M. Sher, Esq.
20 Sher & Leff
21 450 Mission Street, Suite 500
22 San Francisco, California 94105
23 TELEPHONE: (415) 348-8300
24 FAX: (415) 348-8300

25 Duane C. Miller, Esq.
26 Miller & Sawyer
27 1651 Response Road, Second Floor
28 Sacramento, California 95815
TELEPHONE: (916) 924-8600
FAX: (916) 927-9267

FOR EXXON MOBIL CORPORATION:

Assistant General Counsel of Litigation
Attn: John Tully
800 Bell Street
Houston, Texas 77002

with copy to:

Roy Wuchitech, Esq./ Jeff Parker, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
TELEPHONE: (213) 617-5470
FAX: (213) 620-1398

1 FOR CHEVRONTEXACO CORPORATION AND
2 CHEVRON U.S.A. INC.:

3 Kenneth L. Waggoner
4 Vice President & General Counsel
5 North America Products Company
6 P.O. Box 5044
7 San Ramon, California 94583
8 TELEPHONE: (925) 842-1514
9 FAX: (925) 997-0540

10 with copy to:

11 David Schrader
12 Morgan, Lewis & Bockius LLP
13 300 South Grand Avenue
14 Los Angeles, California 90071-3132
15 TELEPHONE: (213) 612-7370
16 FAX: (213) 612-2554

17 FOR THRIFTY OIL COMPANY AND BEST CALIFORNIA GAS LTD.:

18 Barry W. Berkett
19 13116 Imperial Highway
20 P.O. Box 2128
21 Santa Fe Springs, California 90670
22 FAX: (562) 921-2077

23 with copy to:

24 Mark Gilmartin
25 233 Wilshire Boulevard, Suite 350
26 Santa Monica, California 90401
27 TELEPHONE: (310) 395-7333
28 FAX: (310) 395-7573

FOR SHELL

21 Dave Kinnan
22 General Counsel
23 Shell Oil Products Company
24 Po Box 2463
25 Houston, Texas 77252-2463
26 TELEPHONE: (713) 241-7152
27 FAX: (713) 241-5657

28 with copy to:

Thomas W Kearns
Senior Counsel
Shell Legal Services
P.O. Box 2463
Houston, Texas 77252-2463

1 TELEPHONE: (713) 241-5633
2 FAX: (713) 241-4081

3 and to:

4 H. Brad Boschetto
5 Remediation Manager
6 Shell Oil Company – HS&E, Remediation
7 24551 Raymond Way, Suite 160
8 Lake Forest, CA 92630
9 TELEPHONE: (949) 699-0393
10 FAX: (949) 699-0388

11 **3.33 WARRANTY OF AUTHORITY**

12 Each person who executes this Settlement Agreement on behalf of a corporation,
13 partnership, joint venture, unincorporated association, municipal corporation or other entity
14 represents and warrants to each party that he or she has the authority to do so.

15 **3.34 FORCE MAJEURE**

16 Upon the occurrence of an uncontrollable circumstance, the party affected shall be
17 excused from any delay in performance under this Settlement Agreement. For purposes of this
18 Settlement Agreement, an "uncontrollable circumstance" includes, but is not limited to, Acts of
19 God, fire, flood, civil unrest, terrorist events, earthquake, declaration of a public emergency,
20 injunction, and labor disputes.

21 **3.35 DISMISSAL**

22 COSM, through its counsel of record, shall execute and file Requests for Dismissal,
23 with prejudice, of the entire Litigation as to all of the Released Parties that are Defendants in the
24 Litigation within ten (10) days following receipt of the Initial Payments from the Settling
25 Defendants.

26 **3.36 GOVERNING LAW**

27 This Settlement Agreement and all actions arising out of or in connection with this
28 Settlement Agreement shall be governed by and construed in accordance with the laws of the State
of California, without regard to the conflicts of law or choice of law provisions thereof.

1 **3.37 WAIVER**

2 With respect to the release of Claims contained in Paragraph 3.5 ("COSM's Release
3 of Claims") above, COSM expressly waives any rights or benefits available under section 1542 of
4 the California Civil Code, which provides as follows:

5 **A GENERAL RELEASE DOES NOT EXTEND TO**
6 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**
7 **OR SUSPECT TO EXIST IN HIS FAVOR AT THE**
8 **TIME OF EXECUTING THE RELEASE, WHICH IF**
9 **KNOWN BY HIM MUST HAVE MATERIALLY**
10 **AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

11 The parties understand and acknowledge the significance and consequence of the specific waiver
12 of California Civil Code section 1542 described above.

13 **3.38 NO ADMISSION**

14 This Settlement Agreement is a compromise of disputed claims and fully and
15 finally settles all Claims by COSM and Shell against the Released Parties, and prevents any
16 further action against the Released Parties in the Litigation. Neither the payment of any
17 consideration hereunder nor anything contained in this Settlement Agreement shall be interpreted
18 or construed to be an admission on the part of, nor to the prejudice of, any person hereto. The
19 Released Parties expressly deny any and all liability associated with or related to the Claims.
20

21 **3.39 WARRANTY OF RIGHTS**

22 COSM represents and warrants to the Settling Defendants that it has exclusive right
23 and title to COSM's Charnock Well Field wells. COSM further represents and warrants to the
24 Settling Defendants, TOC and Best, that it has full authority to release the Claims of COSM as set
25 forth in this Settlement Agreement, and full authority, subject to the provisions and conditions of
26 the Assignment Agreement, to release the Claims of SCWC as set forth in this Settlement
27 Agreement.
28

1 3.40 **ENTIRE AGREEMENT**

2 3.40.1 Prior to the entry of this Settlement Agreement, COSM, CVX, XOM,
3 TOC and Best had entered into a settlement agreement ("First Settlement Agreement") and CVX
4 and XOM had entered into a binding MOU governing allocation and selection of their
5 Engineering Committee representative ("CVX/XOM MOU").

6 3.40.2 So long as this Settlement Agreement remains in force, then the First
7 Settlement Agreement and the CVX/XOM MOU shall be suspended.

8 3.40.3 If this Settlement Agreement is voided under Paragraph 3.1.2, then the
9 First Settlement Agreement and the CVX/XOM MOU shall become operative.

10 3.40.4 Contemporaneously with this Settlement Agreement, Shell, CVX and
11 XOM have entered into a binding MOU governing allocation and selection of their Engineering
12 Committee representative ("Shell/CVX/XOM MOU").

13 3.40.5 So long as this Settlement Agreement remains in force, then the
14 Shell/CVX/XOM MOU will remain in force.

15 3.40.6 If this Settlement Agreement is voided under Paragraph 3.1.2, then the
16 Shell/CVX/XOM MOU will be voided simultaneously.

17 3.40.7 Each party to this Settlement Agreement declares and represents that
18 no promises, inducements, or other agreements not expressly contained herein between (1) COSM
19 and (2) Settling Defendants have been made with regard to the settlement of the Litigation; that
20 this Settlement Agreement, and all Operative Agreements, and all attachments to this Settlement
21 Agreement, contain the entire agreement between (1) COSM and (2) Settling Defendants with
22 respect to said subject matter; and that the terms of this Settlement Agreement, including all
23 words, phrases, sentences, and paragraphs, including the recitals hereto, are contractual and not
24 recitals only, and are material to the execution of this Settlement Agreement. Except as provided
25 in this Paragraph 3.40, all prior agreements and understandings, oral agreements and writings
26 between (1) COSM and (2) Settling Defendants regarding the matters set forth herein, including
27 without limitation, that certain Memorandum of Understanding ("MOU") entered into among
28

1 COSM, CVX and XOM on or about July 18, 2002, are expressly superceded hereby and are of no
2 further force or effect. This Settlement Agreement may not be altered, amended, or modified in
3 any respect, except by a writing duly executed by COSM and the Settling Defendants.

4 **3.41 SEVERAL LIABILITY**

5 The liabilities of Settling Defendants set out in this Agreement are several, not
6 joint.

7 **3.42 BINDING EFFECT**

8 This Settlement Agreement and any Operative Agreements shall be binding upon
9 and inure to the benefit of the Released Parties and the COSM/SCWC Released Parties.

10 **3.43 TRIAL COURT JURISDICTION AND VENUE**

11 The trial court shall retain jurisdiction and venue in Orange County Superior Court
12 Case No. 01-CC-04331 to enforce the terms of this settlement pursuant to California Code of Civil
13 Procedure section 664, *et seq.* The parties to this Settlement Agreement specifically agree that this
14 is a judicially supervised settlement pursuant to California Code of Civil Procedure section 664.6.

15 **3.44 POLICE POWERS**

16 Nothing in this Settlement Agreement is intended to limit COSM's police powers.

17 **3.45 FURTHER DOCUMENTS**

18 To the extent any documents are required to be executed by any of the parties to
19 this Settlement Agreement to effectuate this Settlement Agreement, each party agrees to execute
20 and deliver such other and further documents (including but not limited to any UCC-1 Financing
21 Statements and UCC Continuation Statements) as may be required to carry out the terms of this
22 Settlement Agreement and any Operative Agreement.

23 **3.46 REPRESENTATION**

24 Each party to this Settlement Agreement represents and acknowledges that it has
25 been represented by counsel with respect to this Settlement Agreement and any and all matters
26 covered by or related to such Settlement Agreement. Each party has been fully advised with
27 respect to all rights which are affected by this Settlement Agreement.
28

1 **3.47 NEUTRAL CONSTRUCTION**

2 The parties to this Settlement Agreement agree that this Settlement Agreement was
3 negotiated fairly between them at arms' length and that the final terms of this Settlement
4 Agreement are the product of the parties' negotiations. The parties agree that this Settlement
5 Agreement shall be deemed to have been jointly and equally drafted by them, and that the
6 provisions of this Settlement Agreement therefore should not be construed against a party or
7 parties to it on the grounds that the party or parties drafted or was more responsible for drafting the
8 provision(s).

9 **3.48 VOLUNTARY AND KNOWING RELEASE**

10 Each party signing represents and warrants that it read, knows, and understands the
11 contents of this Settlement Agreement, has executed this Settlement Agreement voluntarily, and
12 has not been influenced by any person or persons or attorney acting on behalf of any other party,
13 and understands that after signing this Settlement Agreement, each party cannot proceed against
14 the other on account of any of the matters released pursuant to Paragraphs 3.5 and 3.6 ("COSM's
15 Release of Claims" and "Settling Defendants' Release of Claims") above.

16 **3.49 HEADINGS, NUMBER AND GENDER**

17 Headings are used herein for convenience only and shall have no force or effect in
18 the interpretation or construction of this Settlement Agreement. As used in this Settlement
19 Agreement, the singular shall include the plural, and the masculine shall include the feminine and
20 neuter genders.

21 **3.50 TIME IS OF THE ESSENCE**

22 Time is of the essence for each and every provision of this Settlement Agreement.

23 **3.51 GOOD FAITH EFFORT**

24 The parties to this Settlement Agreement shall use their respective good faith
25 efforts to comply with their obligations under this Settlement Agreement and all Operative
26 Agreements.
27
28

1 **3.52 NO WAIVER; REMEDIES**

2 No failure on the part of any party to this Settlement Agreement to exercise, and no
3 delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or
4 partial exercise of any right hereunder preclude any other or further exercise thereof or the
5 exercise of any other right. The remedies herein provided are cumulative and not exclusive of any
6 remedies provided by law.

7 **3.53 SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

8 All representations and warranties of the parties to this Settlement Agreement have
9 been and will be relied on by the other parties to this Settlement Agreement notwithstanding any
10 investigation made by them.

11 **3.54 PAYMENT OF ATTORNEYS' FEES AND COURT COSTS**

12 Each party to this Settlement Agreement shall be responsible for the payment of its
13 own court costs, attorneys' fees, and all other expenses, costs, and fees in connection with the
14 matters referred to in this Settlement Agreement, except as expressly set forth herein.

15 **3.55 ATTORNEYS' FEES AND COSTS TO ENFORCE AGREEMENT**

16 If any action is required to be taken by any party to enforce this Agreement and/or
17 any decision of an arbitrator as provided in this Settlement Agreement, the prevailing party in any
18 such action shall be entitled to reasonable attorneys' fees and costs.

19 **3.56 ADMISSIBILITY OF AGREEMENT**

20 The parties expressly agree that this Settlement Agreement is a protected
21 communication under California Evidence Code section 1119; however, the same shall be
22 admissible in an arbitration or any proceeding to enforce an arbitral decision under this Settlement
23 Agreement for the sole purpose of enforcing the terms of this Settlement Agreement.

24 **3.57 EXECUTION BY COUNTERPARTS**

25 This Settlement Agreement may be executed in one or more counterparts. All
26 counterparts will constitute one instrument binding on the signatories upon execution of one or
27 more counterparts by all parties. Counsel for any party shall be authorized to assemble a
28

1 composite counterpart which shall consist of one copy of each page, except the signature pages,
2 together with multiple counterpart signatures pages executed on behalf of every party to this
3 Settlement Agreement. The composite counterpart may then be used by any party for all purposes
4 as the complete signed and executed Settlement Agreement among the parties. This Agreement
5 may be executed by transmittal of facsimile signature counterparts.

6 IN WITNESS WHEREOF, the parties hereto have duly executed this Settlement
7 Agreement as of the day and year first above written.

8 Date: _____, 2003

SHELL OIL COMPANY, SHELL OIL
PRODUCTS COMPANY, SHELL
PIPELINE COMPANY, EQUILON
ENTERPRISES LLC, EQUILON
PIPELINE COMPANY

12 By _____

13 Title _____

14 Date: _____, 2003

TMR COMPANY as successor in interest
to TEXACO REFINING & MARKETING,
INC.

17 By _____

18 Title _____

19 Date: _____, 2003

EXXON MOBIL CORPORATION

21 By _____

22 Title _____

23 Date: _____, 2003

CHEVRON U.S.A. INC.,
CHEVRONTEXACO CORPORATION

26 By _____

27 Title _____

1
2 Date: _____, 2003

THRIFTY OIL CO.

3
4 By _____

5 Title _____

6 Date: _____, 2003

BEST CALIFORNIA GAS, LTD.

8 By _____

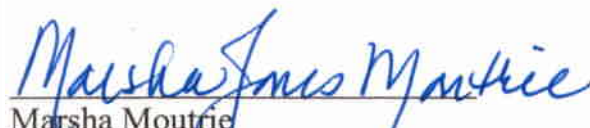
9 Title _____

10
11 Date: November 25, 2003


CITY OF SANTA MONICA, individually
and as the assignee of SOUTHERN
CALIFORNIA WATER COMPANY

14
15 By 
16 Susan E. McCarthy
17 City Manager

18 Approved As to Form:

19
20 
21 Marsha Moutrie
22 City Attorney, City of Santa Monica

23 Attest:

24 
25 Maria Stewart
26 City Clerk, City of Santa Monica
27
28